

**MINUTES OF THE
EXECUTIVE APPROPRIATIONS COMMITTEE**
Tuesday, September 18, 2012 - 1:00 p.m. - Room 445 State Capitol

Members Present:

Sen. Lyle W. Hillyard, Co-Chair
Rep. Melvin R. Brown, Co-Chair
Sen. Kevin T. Van Tassell, Vice Chair
Rep. John Dougall, Vice Chair
Sen. Scott K. Jenkins
Sen. Patricia W. Jones
Sen. Peter C. Knudson
Sen. Ben McAdams
Sen. Karen W. Morgan
Sen. Wayne L. Niederhauser
Sen. Ross I. Romero
President Michael G. Waddoups
Rep. Brad L. Dee

Rep. Gregory H. Hughes
Rep. Brian King
Speaker Rebecca D. Lockhart
Rep. Ronda Rudd Menlove
Rep. Jennifer M. Seelig
Rep. Christine Watkins

Members Excused:

Rep. David Litvack

Staff Present:

Mr. Jonathan Ball, Legislative Fiscal Analyst
Mr. Steven Allred, Deputy Director
Ms. Greta Rodebush, Legislative Secretary

Note: A copy of related materials and an audio recording of the meeting can be found at www.le.utah.gov.

1. Call to Order/Approval of Minutes

Co-Chair Brown called the meeting to order at 1:32 p.m.

MOTION: Sen. Hillyard moved to approve the minutes of August 14, 2012. The motion passed unanimously with Sen. McAdams, Sen. Morgan, Rep. Hughes, Speaker Lockhart, and Rep. Seelig absent for the vote.

2. Federal/Non-federal Grants

Ms. Jill Flygare, Governor's Office of Planning and Budget (GOPB), presented the Federal/Non-federal Grants Report dated September 18, 2012. Under the federal grants, there were three new grants and one reapplication/continuation of an existing grant requiring legislative action. The Governor's Office approved one new grant, five reapplications/continuations of existing grants, and one supplemental of an existing grant.

Under the non-federal grants, there were no new grants and no reapplications/continuations or revisions of existing grants requiring legislative action. The Governor's Office approved three new non-federal grants.

President Waddoups requested more information on the Department of Health's Adult Medicaid Quality grant. He expressed concern that the State might have to assume long term maintenance or cost streams associated with the program. The federal annual award for this program is \$1 million.

President Waddoups also inquired about the Department of Natural Resources', Land and Water Conservation - 2012 SCORP grant. The federal annual award is \$57,000 with a state match of \$57,000. He felt that since local governments will be the recipients of these funds, perhaps they should provide the matching funds.

Ms. Flygare indicated that she would discuss President Waddoups' concerns with the departments and get back to him.

President Waddoups also inquired about the reapplication approved by the Governor's Office for the Department of Health's Adult Viral Hepatitis Prevention Coordinator, federal annual award of \$468,383. During the 2012 General Session, the Legislature approved \$64,555 of the federal annual award. The department is seeking approval for the difference, \$403,828. President Waddoups thought that the Centers for Disease Control and Prevention (CDC) should have a lead role in the monitoring and surveillance of hepatitis rather than the state.

Sen. Hillyard asked if delaying the approval of these three grants would be problematic. Ms. Flygare pointed out that GOPB has a policy whereby the EAC can still approve grants but the Governor's Office will not implement them until the Committee's questions have been resolved.

President Waddoups indicated that the Adult Viral Hepatitis Prevention Coordinator grant program does not need the approval of the EAC.

MOTION: Sen. Hillyard moved to recommend acceptance of the federal grants as outlined on page 1 of the handout entitled, "Federal/Non-Federal Grants Review and Approval" under the heading, "Grants Requiring EAC Review and Recommendation" and dated today, September 18, 2012, excluding the new federal grant, Adult Medicaid Quality Grant, and the reapplication of an existing grant, Land and Water Conservation Fund - 2014 SCORP.

Sen. Hillyard stated that while the EAC does not need to approve the Adult Viral Hepatitis Prevention Coordinator, the grant will be included on next month's agenda so that the Governor's Office can respond to President Waddoups' questions.

Ms. Flygare mentioned that the Department of Natural Resources had three months from the date of application, July 27, 2012, to get EAC's approval for the Land and Water Conservation Fund - 2014 SCORP grant. A review in the October EAC meeting would be cutting it close.

The motion passed unanimously with Sen. McAdams and Sen. Morgan absent for the vote.

3. Medicaid Inspector General Report

Mr. Lee Wyckoff, Inspector General, reported on the activities of the newly created Office of Inspector General of Medicaid Services (OIG). He stated the office infrastructure is now in place and includes an internal audit team, a program integrity team, and a data mining team.

Mr. Wyckoff indicated that in the first year of operations, the OIG spent about \$2 million of state and federal funds. In exchange for the \$2 million, the OIG has collected and deposited \$7.5 million. There is also \$18.3 million tied up in the administrative hearing process and another \$400,000 that OIG did not include in the last monthly report. In addition, the Department of Health is currently collecting another \$2.6 million.

Mr. Wyckoff reported that the internal audit team had completed seven audits and that Medicaid and the Department of Health have adopted 96 percent of the team's recommendations. He briefly discussed five policy recommendations that included a hierarchy of authority, a provider exclusion process, availability of historical records, a 30-day readmit policy, and additions to the sanctioning rule. The program integrity

team has eliminated a backlog of one thousand hospital utilization reviews and the data mining team is providing algorithms and statistics that are helping steer the use of resources.

Mr. Wyckoff also mentioned that OIG was partnering with the provider community on a couple of initiatives and has conducted nearly thirty statewide training sessions on fraud, waste, and abuse.

Mr. Wyckoff stated that in terms of return on investment, for every one dollar spent on staffing, rental, and computers, OIG is returning \$9.06 back to the state or approximately \$733,565 per FTE. He also mentioned that the state is transitioning to a capitated health delivery model and that the majority of Utah Medicaid recipients will be on this model by January 2013. OIG has planned for this transition and has hired a HEDIS and CAHPS person to ensure state compliance.

Mr. Wyckoff responded to Sen. Jenkins' question on over-billings, and Speaker Lockhart's questions on return on investment and hierarchy of authority.

Mr. Wyckoff indicated that over-billing is based on coding technicalities. The OIG is working with the provider community to determine what should and shouldn't be refunded. He stated over a five-year period, the return on investment should go down. If OIG is doing its job in communicating with the provider community, they should see a decrease in erroneous billings, fraud, and abusive prescription practices. The Department of Health has adopted an administrative rule that establishes a hierarchy of authority which will help providers resolve conflicts in carrying out policies and procedures. Mr. Wyckoff stated that he is satisfied with the administrative rule.

President Waddoups asked if there has been any resistance to change. Mr. Wyckoff stated that thus far, the OIG has had a favorable cultural impact. Initially, the OIG met with a large amount of resistance and everything was appealed. The OIG goal is to set expectations and document their recommendations whether or not the entities choose to adopt the recommendations. The function of the internal audit is to create sustainable change.

President Waddoups asked if the OIG tracks institutional offenses. Mr. Wyckoff responded that the OIG has a tracking database to capture the return on investment on a case by case basis but not specific to providers, recipients, or hospitals. He felt that this would be good knowledge to have.

Rep. Hughes observed that OIG collections could potentially cover OIG costs for five years. He asked if Mr. Wyckoff could imagine a scenario where the returns would be little or none or if the OIG will always be able to find issues because of human error, the accounting process, or the complicated nature of Medicaid. Mr. Wyckoff clarified that he prefers to report on hard dollars and cents rather than on collections that have not been fully realized. He mentioned that the OIG also does a lot of cost avoidance work that is not counted in the ROI. In addition, Medicaid is migrating to a Managed Care Organization, which may make the reporting of numbers more difficult.

Sen. Hillyard asked if the cash collected is federal or state money, or somewhere in between. Mr. Wyckoff stated that the split is based on the historical FMAP with 70 to 73 percent going to the federal government.

4. Utah State Office of Education Report on Implementing Online Testing

Mr. Larry Shumway, State Superintendent of Public Education, Utah State Office of Education (USOE), reported on the implementation of two online testing programs. Deputy Superintendent Martell Menlove and Associate Superintendent Judy Park provided assistance.

During the 2012 General Session the Legislature appropriated \$6.7 million ongoing to support the statewide online adaptive testing program (H.B. 15) and \$7.6 million one-time to support grants to school districts and charter schools to purchase online testing infrastructure (S.B. 97). The funding for these programs was appropriated in FY 2013.

Superintendent Shumway stated that in August, the USOE completed and posted a Request for Proposal to begin the selection process for a vendor to provide computer adaptive assessments. Proposals are due on October 1st and the final contract will be awarded by January 2013. USOE expects that the new computer adaptive testing (CAT) model will be implemented no later than the 2014-2015 school year.

Superintendent Shumway indicated that USOE has developed a schedule to distribute funding appropriated for online testing infrastructure to school districts and charter schools on a per student basis. Based on applications from school districts and charter schools, the funds will be used for new hardware, network infrastructure, upgrades to current systems, and support. The Superintendent noted that administrative online participation has gone from 8 percent in 2007 to 98 percent in 2012 and 100 percent in 2013.

Finally, Superintendent Shumway stated that in order to assure the most open approach to the market in procuring an assessment system, the Utah State Board of Education withdrew from the Smarter Balance Assessment Consortium. He stated that long term success in public education will require an ongoing investment in technology.

Speaker Lockhart asked which tests are still administered as bubble sheet. Mr. Shumway stated that the National Assessment of Education Progress (NAEP), Alternative Assessment for Special Education Students, and the CRT are administered on line. The Utah Assessment of Language Proficiency (UALPA), ACT and AP examinations administered by the College Board are paper tests.

5. Progress Report on Improving Public Education Estimates

Mr. Ben Leishman, Fiscal Analyst, LFA, and Dr. Thomas Young, Economist, LFA, presented the report, "Minimum School Program: Improving Program Cost & Distribution Estimates." They discussed LFA's model for estimating Weighted Pupil Units (WPU) for the Minimum School Program (MSP). WPUs determine the cost of the MSP and are used to distribute state funding to school districts and charter schools.

The current process of converting the Average Daily Membership (ADM) to estimated Weighted Pupil Units (WPU) uses two types of input data, system data and consensus data. Previously, the USOE would convert the input data to estimated WPUs and shares their WPU estimate with LFA and GOPB. In April, an error was discovered in the number of WPUs USOE estimated for the MSP in FY 2013. Mr. Leishman pointed out that having only one government entity estimating WPUs creates a single point of failure in the system. To solve the problem, LFA, USOE, and GOPB determined that each office should develop independent models to estimate WPUs and form a consensus estimate.

Mr. Leishman explained LFA's conversion model for estimating WPU's. The model imports raw system and consensus data that includes the latest ADM count and enrollment projection and runs the conversion in a statistical database. Mr. Leishman indicated that this process will improve the reliability of information over time and make it easier to manipulate variables within the program formulas. Going forward, LFA will be able to build historical information and use economic indicators to project future ADMs and enrollment numbers. LFA will work collaboratively with USOE and GOPB, comparing each entity's conversion results to determine if there are any differences.

Mr. Leishman explained that once the WPU counts are determined by program, LFA can convert WPU's into dollars to determine the cost of each program using a program cost formula. The formulas for each WPU program are detailed in statute and range from simple to complex.

Using the automated conversion model, Dr. Young showed an example of how changing the Professional Staff Cost Formula might impact the distribution of dollars to Local Education Agencies (LEAs).

Mr. Leishman pointed out that the distribution model applies to WPU programs. LFA is in the process of developing a distribution model for Non-WPU (Below-the-Line) Programs, which have different formulas.

Mr. Leishman indicated that the conversion model will be fully tested this fall when LFA begins estimating FY 2014 WPU's. LFA will also complete the development of the MSP Program distribution models for use during the upcoming General Session. In addition, LFA and the USOE have identified some areas where statute and formula provisions have minor conflicts, which will be brought to the attention of the Public Education Appropriations Subcommittee later this fall. Finally, the USOE has implemented a new student accounting database which should improve student count data and result in more accurate estimates.

Sen. Jones asked Mr. Leishman to explain the difference between the Base WPU Value and the Add-on WPU Value.

6. FY 2012 Preliminary Surplus, Nonlapsing, and Account Balances

Mr. Stephen Jardine, Fiscal Analyst, LFA, called attention to the three handouts behind Tab 6 and introduced Mr. John Reidhead, Director, Division of Finance.

Mr. John Reidhead presented "State of Utah, Financial Highlights, Preliminary Information Subject to Audit, Fiscal Year Ended June 30, 2012." He reported that the preliminary fiscal year end surplus for 2012 is \$46,385,000, which takes into account statutory transfers made to the General Fund Budget Reserve Account (\$10 million), the Education Fund Budget Reserve Account (\$35 million), the Disaster Recovery Restricted Account (\$5 million), and the Industrial Assistance Account (\$2 million).

Mr. Jonathan Ball passed out "FY 2012 Preliminary Close-Out (in Millions)" that clarified the \$85 million revenue surplus announced by the Governor. The crosswalk of numbers shows some unused earmarks, excess account balances, and lapsed spending authority that were not included in the \$85 million. With those additions to the revenue surplus, available revenue subtotals \$98 million. After the statutory transfers are made, the preliminary close-out for FY 2012 is approximately \$46 million.

Sen. Hillyard commented that the Division of Finance, the Governor's Office, and the Legislative Fiscal Analyst's Office, do an outstanding job in coming up with these figures.

Speaker Lockhart commented how close our previous revenue estimates are to reality, which makes the Legislature's job easier. She pointed out that even though we do not know what is going to happen with the federal economy, Utah's economy is steady due to good policies and the people and businesses in Utah.

Sen. Van Tassell also complimented staff.

Mr. Jardine discussed a foldout spreadsheet, "Accounting in Utah State Government (Fund Accounting)," and gave two examples of some of the difficulties that have arisen as a result of the underlying concepts of fund accounting. He highlighted the three major fund categories, corresponding funding types, and the key themes for Utah state government accounting. Mr. Jardine noted that the funding categories are color coded to match the 500 plus sub accounts in the Issue Brief, "FY 2012 Preliminary Fund Balances."

Mr. Zackery King, Fiscal Analyst, LFA, presented the Issue Brief, "FY 2012 Preliminary Lapsing and Nonlapsing Balances." As of September 13, 2012, the Division of Finance calculates that state agencies will lapse \$2.2 million back to the General and Education funds and \$165.9 million back to other funds for FY 2012. The preliminary numbers for nonlapsing balances indicate that state agencies and public education will carry forward \$310.9 from FY 2012 to FY 2013. Mr. King noted that the issue brief also shows a comparison of FY 2011 and FY 2012 nonlapsing balances by agency. The nonlapsing balances for FY 2006 - FY 2012 are also illustrated graphically by subcommittee on subsequent pages of the issue brief.

Sen. Niederhauser asked about the negative beginning and ending fund balances in the Labor Commission's Employers' Reinsurance Fund. Mr. Ball stated that the negative balances represent future liabilities that exceed current assets. To further clarify these balances, Mr. Ball offered to meet with Sen. Niederhauser and the Labor Commission.

7. State Debt Update

Ms. Angela Oh, LFA, presented the Issue Brief, "Update on State Debt." She discussed general obligation (GO) bond issuance, property values and the constitutional debt limit, the calculation of the constitutional debt limit, and general obligation bond debt.

This year, Utah will issue approximately \$40 million of GO bonds for buildings. Utah is currently at 82 percent of the constitutional debt limit. Despite declining property values, the state's debt as a percent of property values is gradually decreasing because the amount of debt being issued is less than the amount of debt being paid off. Estimates indicate that the state will be at 77 percent of the limit in 2014 and 68 percent in FY 2015.

Ms. Oh discussed issues related to the calculation of the constitutional debt limit. The constitutional limit is calculated using 100 percent of the fair market value of taxable property from the last assessment. However, neither the constitution nor statute precisely defines how to make that calculation. The Analyst recommends that the Legislature consider legislation to clarify how to calculate the constitutional debt limit, including what is meant by "last assessment" of taxable property, what should be included in assessed property, and what property tax projections will be used to estimate future debt limits.

Ms. Oh also discussed Utah's general obligation bond debt. Utah's debt per capita peaked at approximately \$1,240 in FY 2012 due to increased bonding for highway projects. In FY 2014, Utah will pay off \$315

million of bond principal and \$129 million of interest on GO bond debt. Transportation revenues will be sufficient to pay debt on existing and anticipated bonds.

In regards to priority of payments to debt service obligation, bond rating agencies have indicated that a priority of payments help strengthen a state's credit rating. Even though Utah has a high credit rating, the Analyst recommends codifying the priority of payments to debt service obligation.

Mr. Richard Ellis, State Treasurer, reported on his recent meeting with the bond rating agencies in New York. He indicated that Utah is responding to their concerns over the reduction in federal funds, Medicaid expansion, and priority of payments. The rating agencies are very happy with how Utah has dealt with Other Post Employment Benefits (OPEB) and retirement obligations. The rating agencies also looked at how Utah is dealing with debt management in terms of debt per capita, debt to personal income, and debt to expenditures. Mr. Ellis noted that the Treasurer's Office had sold \$40 million in GO bonds to J.P. Morgan Chase and refunded just over \$4 million of the 2004 B Highway Bonds which will save about \$40,000 a year.

Speaker Lockhart noted that as the state pays off its debt obligations, our debt per capita and debt service ratio as compared to other states should go down. She pointed out the bar graphs in the Issue Brief do not remain constant. Having been involved in the specifics of the budget for the last ten years, Speaker Lockhart stated that the Legislature anticipated the debt obligation as well as the pay off.

Rep. King asked about the calculation of the constitutional debt limit and the troughs in the line graph represented in Figure 1. Mr. Ball clarified that the constitutional debt limit is calculated using the fair market value of all taxable property in the state, not just state owned property. The troughs in the line graph reflect a timing difference where the constitutional debt limit is based on property values from two years ago.

Sen. Niederhauser asked how the state's constitutional debt limit that caps general obligation debt at 1.5 percent of the value of taxable property compares with other states. Mr. Ellis stated that the 1.5 percent is comparable to what other states have. He did not think that raising the limit would affect Utah's credit rating.

MOTION: Sen. Hillyard moved to direct the Legislative Fiscal Analyst to work with the State Treasurer, State Tax Commission, State Office of Education, and Governor's Office of Management and Budget to develop detailed written procedures to address the recommendations on page 4 of this report. The motion passed unanimously with Rep. Hughes and Rep. Menlove absent for the vote.

8. Drug Offender Reform Act (DORA) Program Update

Mr. Jardine called attention to the "DORA Program Report to the Office of the Legislative Fiscal Analyst," and the Issue Brief, "Drug Offender Reform Act (DORA)."

Ms. Mary Lou Emerson, Director, Utah Substance Abuse Advisory Council (USAACV) explained the purpose of the report and provided a brief background about the DORA program. In response to intent language passed during the 2012 General Session, the DORA Oversight Committee of the Utah Substance Abuse Advisory Council (USAACV) submitted the DORA Program Report. The Report outlines what is being done to implement the five strategies intended to strengthen the DORA program recommended by

the Utah Criminal Justice Center in its November 2011 *Drug Offender Reform Act: DORA Statewide Report*.

Ms. Emerson, together with Mr. Richard Nance, Director, Utah County Department of Drug and Alcohol Prevention and Treatment, and Vice Chair of the DORA Oversight Committee, and Mr. Craig Burr, Director of Programming, Utah Department of Corrections, and Chair of the DORA Oversight Committee, discussed the “Five Strategies Recommended to Strengthen DORA” as outlined in their five strategies for DORA as outlined in their written report.

Sen. Van Tassell wanted to know how many individuals have entered the treatment program and how many have completed the course. Ms. Emerson indicated that approximately 3,000 have entered the program.

Ms. Audrey Hickert, Utah Criminal Justice Center, University of Utah, stated that two-thirds of the probationers and parolees who participated in the program from July 1, 2007 through June 30, 2009 completed treatment. During that same time frame, about 40 percent of probationers and 30 percent of parolees completed both treatment and supervision.

Sen. Van Tassell asked about the cost per treatment and if DORA is more cost effective than the corrections route. Mr. Nance stated that in the DORA program, the approximate cost per individual is \$3,000 while the yearly cost for incarceration is about \$28,000 per inmate.

Sen. Van Tassell asked further about funds appropriated to the DORA program. Mr. Burr stated the Legislature appropriated \$1.4 million for DORA I, a statewide pilot program (July 1, 2005-June 30, 2008), and \$8-\$9 million for DORA II, a statewide implementation program. As a result of budget corrections, DORA is now funded at \$3,478,900. Sen. Van Tassell asked if DORA will be spending more money on actual results rather than setting up setting up the program. Mr. Burr stated that treatment and supervision programs are now set up in Weber, Salt Lake, Utah, and Davis Counties. Washington, Iron, Cache, Four Corners, Tooele counties have treatment programs only.

Rep. Menlove wanted to know about rate of return to incarceration for people who have been in the DORA program. Ms. Hickert said a two-year follow up study shows that post supervision, new prison admission is only 4 percent for probation and 32 percent for parole. Rep. Menlove asked what the comparative percentage would be without treatment and supervision. Ms. Hickert stated that compared to historical samples, the rate of return to prison is less for probationers and about the same for parolees in the DORA program.

Speaker Lockhart asked if fluctuations in program intent and funding complicate program execution and getting results. Mr. Burr stated that in order for a program to be evidence-based, criteria needs to stay consistent. It has been difficult for the DORA Oversight Committee to keep the criteria the same when there are program and funding changes. Speaker Lockhart asked if it would be more wise to put the available funding into only the treatment and supervision model in fewer counties. Ms. Hickert indicated that the Utah Criminal Justice Center will be doing a comparison study of the partial and full models for the last two years and will have the results of that study before the end of the year. Based on past studies, though, one could assume that it would be better to do the full model.

9. Other Business

Co-Chair Brown informed the committee that the Department of Administrative Services had submitted a written report to the Executive Appropriations Committee as required by House Bill 80, *Reorganization of Administrative Support Functions in State Agencies* (Harper) passed during the 2012 General Session. The report will be forwarded on to the Government Operations Interim Committee for review.

A printout of the report's executive summary, findings and accomplishments, recommendations, and feasibility was placed behind Tab 9 in the committee binders. The full report is available electronically in Dropbox or online.

MOTION: Sen. Hillyard moved to adjourn. The motion passed unanimously with Rep. Dougall and Rep. King absent for the vote.

Co-Chair Brown adjourned the meeting at 3:45 p.m.